

Remarks/Arguments:

Claims 1-19 are pending.

Claim 4 is amended to correct clerical errors. Claim 11 is amended by adding "glutaraldehyde" to the binding-agent Markush group. Support for this species—of binding agent—is provided in example 5 of the specification.

Pursuant to the five (5) restriction requirements—under 35 USC 121—set forth in the Office Action, applicants elect, with traverse:

1 – main-monomer species N-isopropyl acrylamide. Claims 1-19 read on the elected species.

2 – functional-monomer species n-(isobutoxymethyl)acrylamide. Claims 1-19 read on the elected species.

3 – cross-linking-agent species N,N'-methylenebisacrylamide (bisaam). Claims 1-19 read on the elected species.

4 – binding-agent species glutaraldehyde. Claims 1-19 read on the elected species.

5 – phenyl-compound species c) phenyl ester. Claims 1-19 read on the elected species.

– phenyl-ester species cyclodextrin. Claims 1-19 read on the elected species.

Traverse is maintained, first of all, because requiring restriction—under §121—among compound-members of a Markush group is improper. Where compounds in a Markush group constitute independent and distinct inventions, the examiner has authority to require a provisional election of species (not §121 restriction). MPEP 803.02.

"Insofar as the criteria for restriction practice relating to Markush-type claims is concerned, the criteria is set forth in MPEP § 803.02." MPEP 803II. Pursuant to MPEP 803.02 (emphasis added):

A Markush-type claim may include independent and distinct inventions. . . . In applications containing a Markush-type claim that encompasses at least two independent or distinct inventions, the examiner may require a provisional election of a single species prior to examination on the merits. An examiner should set forth a requirement for election of a single disclosed species in a Markush-type claim.

Requiring the division of a generic claim based on restriction under §121 is improper because it would violate a patent applicant's right "to have *each* claim examined." *In re Weber*, 198 USPQ 328, 331 (CCPA 1978). *In re Haas* ("*Haas I*"), 179 USPQ 623 (CCPA 1973).

Traverse is maintained, secondly, in that even requiring a provisional election of a single species is improper, at least with respect to the Markush species groupings of main monomer, cross-linking agent, and binding agent. The species recited in each of the aforesaid Markush groupings are so closely related as to warrant search and examination of each entire grouping.

Pursuant to MPEP 803.02 (emphasis added):

If the members of the Markush group are . . . so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all the members of the Markush group in the claim on the merits, even though they may be directed to independent and distinct inventions. In such a case, the examiner . . . will not require provisional election of a single species.

The species recited in the main-monomer Markush group are all acrylamides and methacrylamides. The species recited in the cross-linking-agent Markush group are acrylates, methacrylates, and an acrylamide. Accordingly, with respect to each of these species groupings, "the members of the

Markush group are . . . so closely related that a search and examination of the entire claim can be made without series burden . . . [and] even though they maybe directed to independent and distinct inventions . . . such a case . . . will not require provisional election of a single species." MPEP 803.02.

Traverse is maintained, lastly, in that the embodiments covered by each of claims 2, 4, 6, 11, and 13 should be examined together. Applicants submit that this is appropriate since all of these claims are dependent on generic claim 1 and their examination would not be an undue burden upon the Office.

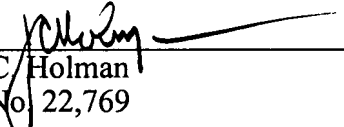
For the foregoing reasons, withdrawal of the restriction requirements appears to be in order.

Favorable action is requested.

Respectfully submitted,

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